

**The Planning Board held a meeting on August 3, 2010 at 7:00 in the GAR Room, City Hall. Members present: Chairperson Wayne McAllister, Anthony Donegan, Paul Sullivan, Vahan Boyajian, James McCarthy, Susan Nicastro and Avalon McLaren. Also present was Secretary Pamela Gurley.**

### **1. Proposed Zoning Changes**

Property: Plots 194, 195 & 196-7 Pleasant St.

Amendment from: C-1 to C-2

The letter of explanation and support from Councillor Cruise dated 8/3/10 was entered into the record. There was no discussion by the Board.

A motion was properly made (Sullivan), seconded (Boyajian) and approved as follows to favorably recommend the zoning change.

In favor: McAllister, Sullivan, Boyajian, McCarthy and Nicastro. (Donegan not present for the matter and McLaren abstained.)

### **2. Extension Request – Site Plan Approval**

70 Oak Street Ext. (Brookside Condos)

Charles Efermides

David Wardwell

Mr. Wardwell said that the electrical, plumbing and fire departments have signed off; he said that the state needs to approve the elevator and a partial certificate of compliance was issued last week by Conservation. He said he is looking to make some changes to the grounds. He said that he would like to install cape cod berm around the back and sides of property; the size of the concrete pad needs to be changed; they need to add a guardrail and they also need an extension to their approval.

Mr. McAllister said that the Board needs to see plans for the proposed changes but would be able to entertain his request for an extension. Ms. Nicastro asked what the current deadline was and Mr. Efermides said three months. Mr. Boyajian said they should ask for six months to make sure the project is completed.

A motion was properly made (Sullivan), seconded (Donegan) and unanimously passed to issue a six month extension to their site plan approve.

### **3. Site Plan Approval**

Property: 1301 & 1313 Belmont Street

Applicant: Stonehill 123 LLC

Representative: John Holmgren, Ed Jacobs, JK Holmgren Engineering, Inc.

Attorney George Asack

Greg Salvatore

Mr. Holmgren said that all technical review issues have been addressed.

Attorney Asack said that a neighbor had concerns about a proposed right hand only turn and they have worked with the neighbor and redesigned the exit. He said that the state has approved the change in the plan although it was not formally submitted to them and the ZBA was in agreement with whatever was agreed to by the state.

Mr. Boyajian asked if that was the only change and was told it was.

Attorney Reed and Attorney Kaiser said they were the immediate abutters that would have been affected by right hand turn only. They said that with the change made to the plan they are in favor of the project.

Tim Fitzroy (BKA) showed the elevation of the property to the Board. Mr. McLaren asked if there were any potential tenants beside Panera or Eastern Bank and was told not as of yet.

Ms. Nicastro noted that the plan not changed until July 19<sup>th</sup>. She told Mr. Holmgren that she had heard that he blamed the Board for holding up the project because they did not meet in July. She said the Board has never met in July, but distinctly remembered his stating at Tech Review that there was no hurray with this project. She said it (no July meeting) would seem to be a non issue since he didn't change the plan until mid-July so that even if there was a July meeting he would have been back before the Board tonight with the change.

Mr. McAllister said there is only one snow removal area. Mr. Holmgren said it is approximately six feet wide along the side and rear of the property. He said if there is too much snow the property owners will have it removed from the site.

A motion was properly made (Sullivan), seconded (Donegan) and unanimously passed to issue a special permit for site plan approve approval for the above project.

#### **4. Definitive Subdivision**

Property: 73 Banks Street

Lots: Two

Applicant: David Cruise/Cruise Properties

Representative: Curley & Hansen

Continued to September 7, 2010 by agreement of the parties.

Statutory time clock for approval has been frozen at the request of the applicant.

#### **5. Definitive Subdivision**

Property: 525 N. Quincy Street

Applicant: Michael Haikal  
Lots: Two  
Representative: Bruce Malcolm, Land Survey

Mr. Malcolm said that this property has had two previous denials issued by the ZBA (a commercial strip plaza and a triplex). He said they were before the Planning Board previously seeking permission to return to the ZBA to create two lots and subsequently have received a variance from the ZBA.

He said the sewer for lot 2 will be brought in through the existing sewer easement. The trees along inside of the fence will be cleared and a portion of the fence will be replaced on the Christopher Road side. He said they will be filing in the curbing and will bring up the sidewalk to grade on N. Quincy St.

Mr. McAllister asked how much fencing and was told approximately 60' of fencing (shows on plan). Mr. Malcolm said that the front portion of the fence is in good shape and will be left.

Mr. McCarthy asked if the concrete 5x5 cesspool will be filled in and was told yes. Mr. McCarthy said that on Christopher Rd. Pole #11 will be able to service both lots (lot 2 will need to run under the driveway and be sleeved) so there is no need for above ground utilities.

Ms. Nicastro asked who the existing sewer easement benefits and was told the COB.

Mr. Malcolm asked if they could use the other pole and Mr. McCarthy said that the sewer easement may prohibit using that pole.

Mr. McAllister asked what they intend to do with the stone wall. Mr. Haikal said that will be turning the wall at the street and use it around driveway.

Mr. Malcolm said they will be preserving the existing shrubs along N. Quincy as much as possible.

Mr. Boyajian said he would like the driveway to come up to the corner of the house and add a walkway from the driveway to the front door.

Ms. Nicastro asked about landscaping and Mr. Haikal said there will be shrubs in the front.

A motion was properly made (McCarthy) and seconded (Donegan) to issue a standard approval with the following special conditions: The proposed houses are to have underground services (the electric services can be run from either existing pole). The driveways are to be extended up to the corner front of the proposed homes with a walkway from the driveway to the front door. Sixty (60)

feet of new fencing is to be installed along the side between lot 1 and 118 Christopher Road. The trees along the inside of the fence line between lot 1 and house #118 Christopher Road are to be removed. As much as possible of the existing stone wall and existing shrubbery is to be preserved and a minimum of nine five gallon size shrubs are to be planted in front of each house.

Mr. McAllister said that two bounds on at the SW corner of lot 1 and 1 at the NE corner of lot two needs to be added to the plan. He also asked the developer what his method of surety was and was told it will be covenant.

Motion was unanimously passed by the members present.

A motion was properly made (McLaren) and seconded (Sullivan) to issue a waiver to the following sections of the Rules & Regulations: Section IV: Design Standards: B. Streets 3. Width (Christopher Road and N. Quincy Street are existing public ways) Section V: Required Improvements for an Approved Subdivision: C. Curbs and Sidewalks (N. Quincy St. is an existing public way with sidewalks and curbing; Christopher Road is an existing public way with no sidewalks or curbing); Section III: B3 Definitive Plan Contents J. Profiles M. Proposed layout of storm drainage N. Typical cross section and B4 Impact Study.

On the motion: Ms. Nicastro asked if there was granite curbing on Christopher Rd. and was told there was not.

Motion was unanimously passed by the members present.

A motion was properly made (Donegan), seconded (Sullivan) and unanimously passed to deny the waiver request for underground utilities.

## **6. Modification Request – Definitive Subdivision**

Property: Briarcliff Road Ext.

Applicant: William Bearce

Representative: Attorney James Burke

Attorney Burke said that the prior subdivision was submitted and approved for 10 lots. He said that there was a recent ZBA variance granting for two additional lots. He said the only variance needed was for frontage as they met the requirement for lot size.

Ms. Nicastro said she would like to see what was approved as she was not on the Board originally. (Attorney Burke gave her a copy of his plan). Mr. McAllister said that information will need to be submitted to the entire Board as the subdivision was approved several years ago and there is more than one new member appointed to the Board since that time.

Mr. McAllister said that Front Nine Drive was originally a private way, because of the new layout the Board will be requiring full layout of the roadway with sidewalks and curbing. As there were some waivers granted at the time of approval; roadway width, sidewalks and curbing for Front Nine Dr. are to be as shown on the previously approved plan for the layout of Briarcliff Road. He said the Board also needs to see the utility connections for the lots.

Ms. Nicastro asked where are houses are to be located. Mr. Bearce said that the building box shows on the plan but that he asked to have the houses removed from the plan. He said that all the houses will be located in the building box layout. He said he elected to not put driveway cuts on plan and he said that the utilities are in including the new lots.

Mr. McLaren said that the plan shows Briarcliff as a private way; Attorney Burke said that needs to be changed as it is an error. Mr. McLaren said that it has been a long time since we approve the plan and he would like to see how this deviates from what was approved; how the lots were split.

Continued to September 7, 2010 by agreement of the parties.

## **7. Modification Request - Definitive Subdivision**

Property: Plot 129 Quincy Street (Toby Road)

Applicant: Tracy Jellows

Representative: Attorney McCluskey

Attorney McCluskey said they are requesting a minor modification at the intersection of N. Quincy and Toby Road. He said Toby Rd. comes out to N. Quincy and there is a paper street across the street that may be built out by another developer. He said that it appears that drainage flows to plot 128-4 N. Quincy. He said the plan calls for the end of road to shift to the NE; and they do not want to make the shift in the road. He said that the road is one way and empties onto N. Quincy. He would like to leave the existing catch basin and not build out the minor bump out of pavement.

Benito Fiore, 422 N. Quincy St., spoke in opposition. He said that as part of the original approval he was to receive a piece of property from Mr. Jellows that he has been taking care of. He said he still has not received his property as promised.

Mr. McAllister said that this provision was contained in the May 2008 ZBA decision as well as the Planning Board decision. Mr. McCluskey said he spoke with Attorney Creedon at the time of the ZBA hearing. He said he will call Jake (Creedon) in the morning and set up a meeting to discuss the conveyance of property and cleaning up of Mr. Fiore's property. Mr. McAllister said that there is nothing in the ZBA decision on the Board's approval that says there are

conditions to the transfer of the property and asked that this be taken care of as soon as possible.

Mr. McAllister read the two stipulations regarding paving of the roadway that were part of the original approval. He said this is what the City was looking for when the approval was granted. He said the other end of Toby Road is a paper street and may never be built. He would suggest that the Board hold him to the original approval. Mr. McCarthy said for safety reasons he would like to see the approved design built as it will allow drivers to see both ways.

A motion was properly made (McCarthy), seconded (Nicastro) and approved as follows to deny the request for a modification.

In favor: McAllister, Nicastro, McCarthy, Donegan, Boyajian and McLaren; Sullivan abstained.

### **Other Business**

#### Review and Approve Minutes

A motion was properly made (McLaren), seconded (Boyajian) and unanimously passed to approve the minutes from the June meeting with the following correction recommended by Mr. Donegan: page 3 “record”(s) is plural should be singular.

#### Remand – North Montello Street Cohasset LLC

Mr. McAllister said that the Board received July 2, 2010 letter from City Solicitor regarding the remand of the above case back to the Planning Board.

As there are only two remaining members on the Board from the time this was first before them it was agreed that no matter which way the Board decides (allowing the plan to be modified or no modifications) the original plan must be submitted along with background.

The members further discussed the two options available to them per the remand order and agreed to send a letter to the plaintiff’s attorney stating that they were in receipt of the letter of remand and will review the file and inform them as to how the Board wishes them to proceed.

#### Plots 3 & 4 Industrial Blvd.

Mr. McAllister discussed an administrative matter that arose since the June meeting concerning Lots 3 & 4, Industrial Boulevard. He stated since this was an administrative matter, the Board would take no public testimony to avoid improperly considering the matter on its merits since no valid application was actually before the Board. He reviewed the background on the matter:

- a. June 23, 2010: A purported submission of materials and plans for approval of a preliminary plan for a non-residential subdivision on Lots 3 & 4, Industrial Boulevard by J.K. Holmgren Engineering;
- b. June 28, 2010: The Chairman's letter to Holmgren rejecting and returning the materials and plans as incomplete and listing some of the deficiencies;
- c. June 29, 2010: A purported resubmission of the same materials and plans bearing no changes to address the deficiencies previously noted;
- d. July 06, 2010: The Chairman's second letter to Holmgren rejecting and returning the unchanged materials and plans, and noting an additional deficiency with the materials; and
- e. July 20, 2010: Another purported resubmission of the same unchanged materials and plans this time by Bingham McCutchen LLP, a Boston law firm, with cover letter that attempted to add information addressing some of the previously noted deficiencies and the required number of copies.

Mr. McAllister said that the materials and plans were returned to the applicant's agent since they do not conform to Board Rules and Regulations since (a) the application is incomplete, (b) it is difficult to determine the identity of the applicant, the owner and the agent, (c) the application is not signed by the owners of easement areas and/or land over which improvements are shown, (d) the application as initially submitted did not include the required sets of copies, and (e) although the rejection was not based on the plans per se, a cursory review of the plans indicated information that must be included is missing. As a result, the materials and plans do not satisfy the requirements, were determined to be incomplete and were rejected. He said that the Board has a procedure for filing an application for approval of a preliminary subdivision plan, but the application must be complete to be processed. By the applicant's own letters, written by its engineer and lawyer, they tried to "fix" the submission by clarifying issues, providing copies, etc. But the proper 'fix' is to correct the deficiencies by incorporating the missing information into the materials and plans, then submitting a new application with the correct number of sets of copies for Board consideration.

He believed the applicant must be advised in writing to submit a new complete application for consideration by the Board. It is the Board's position that the 45 days for action to approve a preliminary subdivision plan according to state law does not begin to run until a complete application is received. To do otherwise sends a message that the Board will act on incomplete filings.

The members present had no questions or comments, so Mr. McAllister asked for a motion.

A motion was properly made (Nicastro), seconded (Donegan) to direct the planning office to again return the materials and plans as rejected because of the deficiencies that render them incomplete; to advise in writing the City Clerk, the owner and legal counsel thereof, to include a statement that there is no application before us so that there is no statutorily imposed time line applicable, and to write to the applicants to advise of the reasons for rejection and return of the materials and plans. Approved by unanimous vote of the Board members present.

Communication from the City Solicitor –The letter from the Law Department regarding petitions to return to the ZBA was self explanatory in nature.

Mr. McAllister asked the Board for a roll call vote to enter into executive session for discussion on pending litigation.

Motion was properly made (Donegan), seconded (Nicastro) to enter into executive session. All members present voted in the affirmative.

Mr. McAllister said that regarding the constructive approval law suit there has been no action on this case. On the technical review law suit the first motion for summary judgment was withdrawn a second motion for summary judgment has been received by the law office.

Motion was properly made (Donegan), seconded (Nicastro) to come out of executive session. All members present voted in the affirmative

Meeting adjourned at 9:40 pm.